

July 24, 2019

EX PARTE NOTICE

VIA ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commissions
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Modernizing the Form 477, WC Docket No. 11-10, and Digital Opportunity
Data Collection, WC Docket No. 19-195**

Dear Ms. Dortch:

On Monday, July 22, 2019, I spoke via conference call with Steven Rosenberg, Ken Lynch, and Kirk Burgee. On Tuesday, July 23, 2019, Chris Shipley and I met with Preston Wise of the Chairman's Office, and on Wednesday, July 24, 2019, we met with Joseph Calascione of Commissioner Carr's Office. In each of these discussions, we covered issues pending in the above-captioned proceedings as described below.

INCOMPAS is pleased that the Commission is moving forward in its effort to ensure that it has the data in hand to identify those areas that are lacking broadband service and must be included in the Commission's next steps to offer universal service support through the Rural Deployment Opportunity Fund. Through its proposed Order (once adopted), the Commission will require fixed broadband providers to submit polygons of their service areas based on technology type and speed offerings. INCOMPAS understands that the FCC intends for this new data collection methodology (as compared to the current Form 477) to improve upon the FCC's, the public's, and other stakeholders' understanding of (1) the geographic areas without broadband availability; and (2) the specific locations within those geographic areas without broadband availability.

We discussed the requirement for fixed broadband providers to submit polygons. We noted that the Commission states in its draft Order that "we require all fixed providers to submit broadband coverage polygons depicting the areas where they actually have broadband-capable networks and provide broadband service to end-user locations."¹ It then defines those providers as facilities-based in note 22, including competitive local exchange carriers offering internet

¹ See *Draft Digital Opportunity Data Collection Order and FNPRM*, ¶ 12.

access service to end-users at 200 kbps or higher. With respect to this requirement, INCOMPAS explained that facilities-based should be defined so that it includes only those providers relying upon their own facilities, not through the purchase or lease of last-mile facilities from others. INCOMPAS noted that should competitors submit polygons that reflect the areas they serve end-users based upon the purchase of last-mile service or facilities from other providers (such as through special access service or unbundled network elements), it will not provide the Commission any additional information necessary for its assessment of broadband availability. Moreover, it potentially overstates the availability of broadband and broadband-capable networks because a polygon based on non-facilities based retail service does not reliably indicate whether the underlying broadband facilities are available throughout the area depicted on the polygon. Thus, INCOMPAS requested that the Commission clarify in its Order that the fixed providers that are required to submit polygons be defined as facilities-based providers that offer the defined broadband service to end-user locations over their own last-mile facilities.²

We also discussed the continued importance of the data collected through the Form 477, the current uncertainty of the process length or timeline for implementation of the new polygon process, and the needed assessment of its adequacy before it replaces any part of the Form 477. As such, we expressed our opposition to indicating a date certain for sunseting any part of the Form 477 in the FNPRM as some have advocated.³

In the meeting with Mr. Calascione, we explained the importance of the subscription data in the Form 477. It is useful for comparing with the availability data and testing its accuracy, for informing the Commission's broadband policymaking, and providing insight into the nation's efforts to improve broadband adoption. Finally, in the meeting with Mr. Calascione, we also discussed the need to improve the Form 477 instructions with respect to broadband network availability so that they are consistent with paragraph 13 in the draft Order. INCOMPAS believes that it will improve the availability information gathered on the Form 477 and help avoid unnecessary inconsistencies between the polygons and the Form 477 data.

² For clarity, INCOMPAS is not requesting an exemption for all competitors and fully expects that its members that offer a competitive broadband service to end-users over their own last-mile facilities will file polygons and will have the incentive to do so to ensure that the Commission's USF efforts are appropriately targeted, efficient, and effective.

³ See NCTA July 19, 2019 Ex Parte Letter, WC Docket Nos. 11-10 & 19-195, at 2.

If you have any questions about this filing, please feel free to contact me.

Respectfully submitted,

/s/ Angie Kronenberg

Angie Kronenberg
Chief Advocate & General Counsel

cc: Steven Rosenberg
Ken Lynch
Kirk Burgee
Preston Wise
Joseph Calascione